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No. 85-1468

In The
Supreme Court of the United States
October Term, 1985

EUGENE P. WOODS,

Petitioner,

vs.

SUPERIOR COURT OF ALAMEDA,

Respondent,

HELEN J. JONES,

Real Party In Interest.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT, DIVISION FOUR

REAL PARTY'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Where the Petitioner accrued marital property while a resident of California, and where Petitioner filed an action for Dissolution of his marriage in California, may California assert its jurisdiction over that same Petitioner in a subsequent action to divide the remainining unadjudicated marital property?

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Real Party Helen J. Jones respectfully requests this Court to deny the Petition for Writ of Certiorari seeking review of the opinion of the California Court of Appeals, First Appellate District, Division Four, entered September 17, 1985.

STATEMENT OF THE CASE

Petitioner, EUGENE P. WOODS and real party, HELEN J. JONES were married on October 4, 1953, in San Francisco, California, where petitioner WOODS was stationed in the United States Air Force. Both parties were domiciled in the State of California prior to December 14, 1972 when petitioner WOODS, as a resident of California, petitioned the Alameda County Superior Court for a Dissolution of Marriage. At that time, petitioner had been in the military service approximately 24 years and had a vested matured right to military retirement pay.

The parties' 1973 Interlocutory Judgment and 1974 Final Judgment of Dissolution make no reference to division of any military retirement pay or any other community property. Petitioner WOODS' attorney prepared the default Judgment which omitted the community property; real party HELEN J. JONES did not have independent representation.

Pursuant to required California procedure, real party JONES filed the underlying partition action herein. Petitioner WOODS had left California in 1977 and he was located in Georgia and duly served with the Summons and Complaint in the underlying action herein.

Although under California community property law the military retirement pay is property owned by both parties, petitioner WOODS has been the only person receiving the pay. The underlying Complaint alleges that real party HELEN JONES has an undivided one-half interest as tenant in common in that portion of the pension accrued during marriage based upon the length of the

marriage divided by the length of the time of credited service.

Petitioner WOODS made a Motion to Quash Service of Process which was denied on March 7, 1985 by the Alameda County Superior Court, respondent herein. Petitioner sought a writ of mandate. On September 19, 1985, the California Court of Appeal denied the peremptory writ and discharged the alternative writ. On December 5, 1985, the California Supreme Court denied the petition for review and ordered the opinion removed from publication.

Petitioner now seeks review at the United States Supreme Court in order to further delay and prevent California from dividing the former marital property left unadjudicated in the original California dissolution proceeding.

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REASONS FOR DENYING THE WRIT

I. THIS CASE HAS LITTLE SIGNFICANCE BEYOND THE IMMEDIATE PARTIES.

Because the appellate opinion in the instant action has been ordered depublished by the California Supreme Court, the opinion is not available as authority in California or in any other jurisdiction, and its holding is limited to the parties within. Therefore, because it has no precedent value, the importance of the case to the rest of the nation is extremely limited.

Furthermore, it is only by a quirk in California procedure, that the real party, HELEN J. JONES had no alternative but to file a separate partition action in equity to receive her portion of the unadjudicated military retirement pay. In California, modification and enforcement proceedings for missed marital property are not

allowed in the original Dissolution. *Henn v. Henn*, 26 Cal 3d 323, 332, 161 Cal Rptr. 502, 605 P 2d 10 (1980). Division of the cotenancy property resulting from undivided community property must proceed by way of a partition action.

When petitioner WOODS brought his dissolution action in the California Courts, he consented to California's jurisdiction over all of the parties' community property and the Court's obligation to divide it evenly. California Civil Code, Section 4800. Because of California procedure, community property which could have been and should have been adjudicated back in the dissolution, is presently being adjudicated as cotenancy property in a partition action. It is questionable that other jurisdictions outside of community property states must follow this same indirect procedure to complete unadjudicated dissolution matters.

II. CALIFORNIA WAS CORRECT IN ASSERTING JURISDICTION OVER A CAUSE OF ACTION WHICH AROSE WHEN PETITIONER WAS A CALIFORNIA RESIDENT.

A. THE CONTROVERSY BEFORE THE COURT AROSE FROM PETITIONER'S PAST CONTACTS WITH CALIFORNIA.

Unlike cases which attempt to obtain jurisdiction over a defendant based upon minimum contacts which are unrelated to the cause of action in question such as *Kulko v. California Superior Court*, 436 U.S. 84 (1977), *Pennoyer v. Neff*, 95 U.S. 714 (1878), *Helicopteros Nacionales de Columbia, S.A., v. Hall*, 466 U.S. 408 (1984), the exercise of jurisdiction here is in an action that derives its entire cause and substance from the rights and duties that should have been adjudicated in the parties' dissolution which petitioner himself initiated in California, in 1972.

If the present controversy could have been treated as an unfinished element in the original dissolution, petitioner would have no basis for objection to jurisdiction, because he was already before the Court by his consent and original appearance. Although California procedure requires petitioner's former wife to use a partition action to adjudicate the marital property heretofore undivided by the dissolution tribunal, that procedural oddity should not prevent California from completing matters begun in its jurisdiction by Petitioner.

A closer analysis of *Kulko v. Superior Court supra*, where the cause of action also arose from the appellant's personal domestic relations, supports California asserting jurisdiction in the instant action. In *Kulko*, this court found New York to be the appropriate forum where the controversy between the parties arose from a marital separation that occurred in the State of New York, "and a modification was sought in a marital contract negotiated and signed in New York." *Id* at 97. Also, in *Kulko*, the appellant had never left the state of marital domicile. In our case, California is the state of marital domicile, where the real party still resides, and California is the State of the separation and divorce. Petitioner's additional act of seeking a California dissolution furthers the finding in *Kulko* that the proper forum for jurisdiction over remaining marital issues is the State of the marital domicile, the marital separation, and the marital settlement agreement.

B. THE SUBJECT OF THIS ACTION IS SO INTERTWINED WITH THE NATURE AND QUALITY OF PETITIONER'S CONTACTS WITH CALIFORNIA THAT NO OFFENSE TO FAIRNESS AND JUSTICE CAN BE CLAIMED.

In evaluating a State's exercise of jurisdiction for its compliance with the standards of due process, "the inquiry must focus on 'the relationship among the defendant, the forum, and the litigation'." *Rush v. Savchuk,* 444 U.S. 320, 327 (1979), quoting *Shaffer v. Heitner,* 433 U.S. 186, 204 (1977).

Petitioner's relationship with the forum is based on his marriage and divorce in the State, his considerable physical presence between the years 1953 and 1977, and that the military retirement benefits, which constitute the subject of the litigation, accrued while he was domiciled in California. Furthermore, real party's right and interest in those benefits, as a community asset, arose in California, and should have been divided and distributed in the California dissolution.

It is not supposed here that the situs of rights to intangible property can move around with the claimant, giving real party the ability to sue for them wherever she may be. On the contrary, regardless of real party's location, the action should be brought in California. California was the forum that decided the original action for dissolution and petitioner has sufficient minimum contacts with California so that requiring petitioner to, in effect, wind up the last remaining element of the dissolution, does not offend traditional notions of fair play and substantial justice.

Other cases in which a violation of due process has been found, can be distinguished from the case at hand because they do not involve the same kind of relationship with the forum that petitioner has had with California. In *Kulko v. Superior Court,* 436 U.S. (1977), the appellant, unlike petitioner herein, had neither lived his married life, resided nor divorced in California. The litigation did not spring from property accrued while appellant resided in California, nor from a prior court action that had any basis or connection with California. In short, *Kulko's* contacts with California were minimal and without any purposeful availment of the laws of California.

Similarly, in *Rush v. Savchuk,* 444 U.S. 320 (1980), the defendant Rush had no contacts whatsoever with the forum state. This Court held that a liability defendant cannot be subject to the jurisdiction of a state simply because his insurer does business there. In *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286 (1979), this Court held that a violation of due process occurred because the defendant's activity and conduct were not such that would give him reason to anticipate being "hauled into court" in that forum. It was too much to ask that a seller of goods designed to move should anticipate suits wherever those goods might travel. However, in the instant case petitioner himself initiated a legal proceeding in California which gives rise to the litigation at hand, so he cannot claim his appearance is unexpected.

This court in *Helicopteros Nacionales de Colombia S.A. v. Hall,* 466 U.S. 408 (1984), found that because the underlying litigation did not directly relate to the defendant's activities within the State, the defendant's activities did not constitute the kind of continuous and systematic

general business contacts required to uphold the exercise of jurisdiction. *Id.* at 416. The instant case, however, not only derives from Petitioner's activities in the state and the related divorce action, but also includes the personal equivalent of "continuous and systematic general business contacts" with California such as the facts of the parties' marriage, domicile, dissolution and accrual of the marital property in dispute in California.

C. SUFFICIENT MINIMUM CONTACTS EXIST BETWEEN THE NON-RESIDENT PETITIONER AND THE STATE OF CALIFORNIA.

In *International Shoe Company v. State of Washington, et al.,* 326 U.S. 310, 316 (1945), this Court established a jurisdictional standard whereby an out-of-state defendant could be compelled to appear in an action in a foreign state. "Due process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he has certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."

The "minimum contacts" test of *International Shoe* is applied to the specific facts of each case. In determining whether it is "reasonable" and "fair" to require defendant to conduct his defense in California, the quality and nature of his activity within the State must be examined. *Kulko v. California Superior Court,* 436 U.S. 84, 92 (1977).

Upon examination of the record, it is apparent that petitioner married real party in California in 1953. During the marriage, petitioner was present in California and considered California to be his domicile. The military re-

tirement pay at issue herein was accrued while petitioner was a California resident. Based upon petitioner's residence in California in 1972, he filed a California action for a dissolution of his marriage to real party. Petitioner retired and after the dissolution in 1974, while a resident of California, he began to receive the military retirement pay in question. To this day, petitioner receives pay rightfully belonging to real party, causing an effect on real party who has remained in California.

Reviewing the facts of this case, there is no doubt that petitioner purposefully availed himself of the benefits and protections of the laws of California, and that his contacts with the State satisfy the Constitutional requirement of "minimum contacts." *Hanson v. Denckla,* 357 U.S. 235, 253 (1958).

1. Connolly v. Burt is Substantially Different From the Instant Case.

Although minimum contacts under the Due Process Clause of the Fourteenth Amendment is the subject of this petition as well as of *Connolly v. Burt,* U.S. Sup. Ct., No. 85-298, *cert. granted* (U.S. Dec. 2, 1985), the facts of *Connolly* are so dissimilar that any disposition of *Connolly* can have no bearing on the instant case.

Connolly involves the constitutionality of allowing personal jurisdiction over an out-of-state defendant in an action for defamation, where the defendant never did business, owned property, or resided in Colorado, the forum state. The Tenth Circuit Court found Dr. Connolly's contact with Colorado was his intentional act of sending an allegedly defamatory letter which was calculated to cause injury. *Burt v. Board of Regents,* 757 F.2d 242, 245 (10th Cir., 1985).

There are no facts, claims or similar elements between *Connolly* and the case at hand, because *Connolly* does not contain issues unresolved in a prior litigation in the forum state from which minimum contacts may derive, and which create the significant relationships among defendant, forum and litigation, such that fair play and substantial justice are not offended. *International Shoe,* 326 U.S. 310 (1945), *Shaffer v. Heitner,* 433 U.S. 186, 204 (1977).

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CONCLUSION

The relationship between the petitioner and the forum has been explored and shown to provide multiple, significant and purposeful contacts such that the "minimum contacts" standard has been met. The relationship between the forum and the litigation is both historical and procedural. The subject of this controversy is an interest which should have been adjudicated in the original dissolution action. It is on this basis that the present litigation which arose in California, should remain in California.

The petition should be denied.

Respectfully submitted,

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March 31, 1986